

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
October 15, 2008 Session

**STATE OF TENNESSEE v. JERMAINE RASHAD CARPENTER**

**Direct Appeal from the Criminal Court for Sullivan County  
No. S51,080 Robert H. Montgomery, Jr., Judge**

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**No. E2007-02498-CCA-R3-CD - Filed February 11, 2009**

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The defendant, Jermaine Rashad Carpenter, was convicted of two counts of sale of Schedule II drugs over .5 grams within 1000 feet of a school, a Class A felony; two counts of delivery of Schedule II drugs over .5 grams within 1000 feet of a school, a Class A felony; and simple possession of cocaine, a Class A misdemeanor. The defendant's convictions for sale and delivery were merged, and he was sentenced to twenty-five years on both convictions for selling Schedule II drugs and to eleven months and twenty-nine days at seventy-five percent for the misdemeanor conviction. The sentences were ordered to run concurrently for a total effective sentence of twenty-five years in confinement. On appeal, he argues that the evidence was insufficient to support his convictions and that the trial court's sentence was improper. After careful review, we conclude that no reversible error exists, and we affirm the judgments from the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed**

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

Stephen M. Wallace, District Public Defender, and William A. Kennedy, Assistant Public Defender, for the appellant, Jermaine Rashad Carpenter.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Teresa A. Nelson, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

At trial, Detective Cliff Ferguson of the Kingsport Police Department testified that he was employed in the police department's vice unit. He said that he was approached by a confidential informant who told him he could purchase cocaine from the defendant. On April 4, 2005, the informant called the defendant to set up a "buy." The detective told the informant to set the transaction up "anywhere as long as it was in Kingsport."

The defendant agreed to meet the informant, and an undercover officer was assigned to make the purchase. The informant and his car were searched for contraband and drugs, and the officer assigned to buy the drugs was equipped with a recording device. No drugs or contraband was found in the informant's car, and the informant and the undercover officer proceeded to the meeting place which was across the street from the Dobbins Bennett High School campus. The detective, who knew the defendant from previous contacts, observed the defendant drive his car into the parking lot of the meeting place. The detective said that the informant and the undercover officer approached the defendant and got into his car. The informant introduced the undercover officer to the defendant as "Mark." The defendant told the undercover officer that his name was "Jermaine." The officer told the defendant that he "was looking to buy about \$80.00 worth of crack cocaine." The officer gave the defendant the drug money that had previously been photocopied, and the defendant handed him four small packages of what appeared to be crack cocaine. The informant and the undercover officer proceeded directly to a prearranged location to meet with the detectives from the vice unit. The undercover officer turned over the four packages to the detective.

The detective testified that the informant placed another call to the defendant on April 14, 2005, and arranged to meet him at a restaurant in Kingsport. The detective searched the informant for drugs and contraband, and the undercover officer was again outfitted with recording equipment. When they arrived at the restaurant, the defendant was already in the parking lot. The restaurant was across the street from Ross and Robinson Middle School. The undercover officer got into the front seat of the defendant's car and exchanged \$80.00 for four tan-colored rocks of crack cocaine. Following the exchange, the detective met with the informant and undercover officer at a predetermined location. The detective said he searched the informant again and took the cocaine the undercover officer purchased from the defendant.

A forensic scientist with the Tennessee Bureau of Investigation testified that on April 15, 2005, she received the rocklike substances purchased from the defendant by the undercover officer. She examined the items and found that the substance purchased from the defendant on April 4, 2005, contained cocaine and weighed 1.4 grams. She said that the substance purchased from the defendant on April 14, 2005, contained cocaine and weighed 1.1 grams.

A cartography expert employed by the City of Kingsport testified that he managed the geographic information for the city and generated computer maps. He explained that both transactions were conducted within 1000 feet of schools.

The director of student services with the Kingsport City School System testified that Dobbins Bennett High School was a functioning public secondary school for the City of Kingsport. He also testified that Ross and Robinson Middle School was a functioning public middle school in April of 2005.

The defendant's grandmother testified that in April of 2005, the defendant had long hair in "corn rows." She said that his hair was braided away from his face. The grandmother further testified that the defendant had tattoos on his arms and wrists.

At the time of the sentencing hearing, the defendant was twenty-four years old and had a criminal record that began at age nineteen. He had prior convictions for various traffic offenses, possession of marijuana, evading arrest, possession of alcohol under the age of twenty-one, rioting, driving on a revoked license, possession of Schedule II drugs with the intent to sell, possession of drug paraphernalia, sale of a counterfeit substance, and failure to appear. The defendant also had three prior convictions for sale of Schedule II drugs.

The case developer with the Sullivan County Community Corrections program testified that he began supervising the defendant on September 27, 2004. He testified that the defendant was placed on community corrections on a seventeen-year sentence. He said that the defendant was initially placed in the residential program, but he was released to home supervision on January 31, 2005. He testified that he filed a violation of community corrections warrant in August 2005, when the defendant was arrested on the underlying charges. He said that the defendant's seventeen-year sentence was revoked following a violation hearing.

Detective Sean Chambers of the Kingsport Police Department testified that he came into contact with the defendant while he was part of the department's vice unit. The detective told the court that following the defendant's arrest in August 2005, he interviewed the defendant and obtained a written statement from him stating:

I have been selling cocaine since about February of 2005. I was working at Lowe's until then. When I started partying again I lost my job at Lowe's. I had to make ends meet so I started selling cocaine. That's how I made money to live, that's what I did to make my living. I would just get my cocaine from whoever I could get it from. I didn't have one particular supplier.

Following the sentencing hearing, the court determined that the defendant was a Range II, multiple offender. The court sentenced the defendant to twenty-five years for each felony conviction to be served concurrently. The defendant was sentenced to eleven months and twenty-nine days at seventy-five percent on his misdemeanor conviction, which to run consecutive to the felony convictions. The trial court ordered the sentences to run consecutive to the defendant's twenty-one-year sentence that he was already serving.

#### Analysis

On appeal, the defendant lists four issues for review. However, the defendant's first three issues deal with sufficiency of the evidence, and we will address it as one issue.

The defendant contends that the evidence presented at trial was insufficient to support his convictions for two counts of selling cocaine in violation of the Drug Free School Zones Act. Specifically, the defendant contends that "[t]he witnesses to the transactions did not properly identify the appellant as the person who sold the drugs."

When an accused challenges the sufficiency of the convicting evidence, the standard of review is “whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781 (1979); *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004); see also Tenn. R. App. P. 13(e). “[T]he State is entitled to the strongest legitimate view of the evidence and to all reasonable and legitimate inferences that may be drawn therefrom.” *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000). Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and an appellate court does not reweigh or re-evaluate the evidence. *State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003). Nor may an appellate court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs*, 995 S.W.2d 102, 105 (Tenn. 1999); *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956).

A jury verdict approved by the trial court accredits the State’s witnesses and resolves all conflicts in the evidence in favor of the State. *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). “Because a verdict of guilt removes the presumption of innocence and imposes a presumption of guilt, the burden shifts to the defendant upon conviction to show why the evidence is insufficient to support the verdict.” *State v. Thacker*, 164 S.W.3d 208, 221 (Tenn. 2005). The rules are applicable to findings of guilt predicated upon the direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999).

The defendant was convicted of two counts of selling cocaine over .5 grams in violation of the Drug Free School Zones Act, a Class A felony. Tenn. Code Ann. § 39-17-432 (2005). Tennessee Code Annotated section 39-17-417(a)(3) states that it is an offense for a person to knowingly sell a controlled substance. Cocaine is a Schedule II controlled substance. Tenn. Code Ann. § 39-17-408(b)(4). In order to convict a defendant, the State must show that the defendant knowingly possessed cocaine in excess of .5 grams with an intent to sell the cocaine. The Drug Free Schools Act was created to enhance criminal penalties for committing a drug offense within 1000 feet of a school. Tenn. Code Ann. § 39-17-432(b) (2005).

After viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could have found the defendant guilty of two counts of selling cocaine over .5 grams in violation of the Drug Free Schools Act. The record reflects that the confidential informant told detectives that he could purchase cocaine from the defendant. On April 5, 2005, the informant called the defendant and arranged a meeting for the purpose of purchasing drugs. The meeting place was within 1000 feet of Dobbins Bennett High School in Kingsport. A detective, who knew the defendant, was conducting surveillance near the meeting place and identified the defendant as he arrived at the location. The confidential informant and an undercover police officer got into the defendant’s car when he arrived. The defendant told the undercover officer that his name was “Jermaine.” The officer exchanged \$80.00 for four small packages of crack cocaine with a total weight of 1.4 grams.

The testimony adduced at trial also reflects that the informant and undercover officer again purchased crack cocaine from the defendant on April 14, 2005. They arranged to meet in the parking lot of a restaurant located within 1000 feet of Ross and Robinson Middle School. At that time, the officer purchased \$80.00 of cocaine that weighed 1.1 grams.

The undercover officer testified that the defendant was the person he purchased the drugs from on both April 5 and April 14, 2005. He further identified the defendant's voice on the audio recordings made during the drug transactions. A detective also identified the defendant at trial. The detective testified that he had previously known the defendant and said he recognized him when he arrived on the scene of the first drug transaction. Our review reflects that the evidence was sufficient, and the defendant is not entitled to relief on this issue.

Next, the defendant contends that his sentence was improperly enhanced according to the Drug Free School Zone Act. Specifically, the defendant argues that it was error for the trial court to enhance his sentence under Tennessee Code Annotated section 39-17-432(b) (2005), because law enforcement chose the location of the transaction.

When a defendant challenges the length and manner of service of a sentence, this court reviews the record with a presumption that the determinations made by the court from which the appeal was taken were correct. Tenn. Code Ann. § 40-35-401(d) (2007). The presumption of correctness "is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." *State v. Ross*, 49 S.W.3d 833, 847 (Tenn. 2001); *State v. Pettus*, 986 S.W.2d 540, 543 (Tenn. 1999); *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991).

In conducting a *de novo* review, the court must consider: (a) any evidence received at the trial and/or sentencing hearing; (b) the presentence report; (c) the principles of sentencing; (d) the arguments of counsel relative to sentencing alternatives; (e) the nature and characteristics of the offense; (f) any mitigating or enhancement factors; (g) any statements made by the defendant on his or her own behalf; and (h) the defendant's potential or lack of potential for rehabilitation or treatment. Tenn. Code Ann. § 40-35-210 (2007); *State v. Taylor*, 63 S.W.3d 400, 411 (Tenn. Crim. App. 2001).

Tennessee Code Annotated section 39-17-432, the Drug Free School Zone Act, states: A violation of § 39-17-417, or a conspiracy to violate such section, that occurs on the grounds or facilities of any school or within one thousand feet (1,000') of the real property that comprises a public or private elementary school, middle school, secondary school, preschool, child care agency, or public library, recreational center or park shall be punished one (1) classification higher than is provided in § 39-17-417(b)-(i) for such violation.

Tenn. Code Ann. § 39-17-432(b) (2005).

Here, the trial court properly sentenced the defendant following his convictions for two counts of selling cocaine over .5 grams in violation of the Drug Free School Zone Act. The defendant was a Range II, multiple offender at trial and was subject to a sentence between twenty-five and forty years for each conviction. Tenn. Code Ann. §§ 40-35-112(a)(1). The trial court did not enhance the defendant's sentence within the range and sentenced the defendant to concurrent twenty-five year sentences.

The defendant contends that the public policy behind the Drug Free School Zone Act was to serve as a deterrent for drug offenses occurring in a school zone. He argues that he was drawn to the area within the school zone by the confidential informant. Basically, the defendant blames the informant for drawing him into the area of the schools on the days of the transactions and argues that this was not the type of conduct contemplated by the Legislature. He contends that law enforcement is being rewarded for arranging the transactions within the parameters of the Drug Free School Zone. The State argues that the defendant is making a "backdoor attempt" to argue entrapment. The trial court found that there was no action on the part of law enforcement to arrange the transactions near the two schools. The record reflects that the informant arranged the transactions and not the police.

The record reflects that the trial court adhered to the law in setting the defendant's sentence. The defendant has not demonstrated that the sentence is improper. Therefore, he is not entitled to relief on this issue.

#### Conclusion

Based on the foregoing and the record as a whole, we affirm the judgments from the trial court.

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JOHN EVERETT WILLIAMS, JUDGE